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IN THE

Supreme Court of the United States

October Term, 1949.
No. 225

THE ANDREW JERGENS COMPANY, a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR REHEARING AFTER ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

(Pages 1 to 8)

BRIEF ACCOMPANYING PETITION.

(Pages 9 to 18)

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To the Honorable Fred M. Vinson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Your Petitioner, The Andrew Jergens Company, a corporation, respectfully petitions that a rehearing and a reconsideration be given its petition for a writ of certiorari, which petition was denied by order of Court on October 10, 1949. Your Petitioner respectfully shows:

I.

On September 27, 1948, the United States Court of Appeals for the District of Columbia issued its decision in the case of National Labor Relations Board, Petitioner, v. Maurice Eanet, doing business as Parkside Hotel and Parkside Hotel, Inc. (a corporation), Respondents, in Case No. 9792. The said decision, in a manner more specifically described hereinafter in the accompanying brief, was in conflict with the decision of the Court of Appeals for the Ninth Circuit in the instant case, in that the decision of the Court of Appeals for the District of Columbia held, as Petitioner contended in the Court of Appeals for the Ninth Circuit and in this Court, that since at that time it could not be said that the union with which the employer was ordered to bargain continued to represent a majority of the employees, the order to bargain with that union would not be enforced until the National Labor Relations Board took further action therein to determine the question of representation. Thereafter, the said Court of Appeals for the District of Columbia granted a petition for rehearing and vacated its decision. The rehearing was thereafter held, but at the time of writing this petition, the said Court of Appeals for the District of Columbia has not issued any decision therein. A copy of the decision of the said Court of Appeals in the aforementioned case is attached to the brief accompanying this petition as Appendix "A".

II.

As is more particularly described in the brief accompanying this petition, the National Labor Relations Board in its instant decision found that the Petitioner had refused to bargain in good faith with respect to the sole issue of union security, although it bargained in good faith on all other terms and conditions of employment proposed by the Union. The Board also found a further unfair labor practice in a wage increase given to the employees, which was found to have been made without prior negotiation with the Union representative. The Board thereupon issued an order requiring Petitioner to:

"1. Cease and desist from:

(a) Refusing to bargain collectively with General Warehousemen's Union, Local 598, of the Teamsters, Chauffeurs, Warehousemen and Helpers, affiliated with the American Federation of Labor, as the exclusive bargaining representative of all production and maintenance employees at the Burbank, California, plant of the respondent, including janitors, truck drivers, and maintenance leadmen, but excluding watchmen, office employees, shipping clerks, maintenance foremen, production supervisors, production assistant supervisors, and all other supervisors;

(b) Unilaterally changing wages which would affect employees in the aforesaid appropriate unit without prior negotiation with General Warehousemen's Union, Local 598, of the Teamsters, Chauffeurs, Warehousemen and Helpers, affiliated with the American Federation of Labor;

(c) In any manner interfering with the efforts of General Warehousemen's Union, Local 598, of the Teamsters, Chauffeurs, Warehousemen and Helpers,

affiliated with the American Federation of Labor, to bargain collectively with it, as the exclusive representative of its employees in the appropriate unit described above.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with General Warehousemen's Union, Local 598, of the Teamsters, Chauffeurs, Warehousemen and Helpers, affiliated with the American Federation of Labor, as the exclusive bargaining representative of the employees in the unit set forth above, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant at Burbank, California, copies of the notice attached hereto and marked 'Appendix A'. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith."

The Court of Appeals for the Ninth Circuit enforced the above order in full, despite the fact that Petitioner contended to both the Board and the said Court of Appeals that the scope of the order was too broad.

III.

On July 30, 1949, Petitioner filed herein its petition for a writ of certiorari to review the decision of said Court of Appeals for the Ninth Circuit. The said petition and supporting brief were served upon Respondent on August 8, 1949.

On September 14, 1949, Respondent filed in this Court its brief in opposition to the aforementioned petition for a writ of certiorari. The said brief of Respondent was filed in contravention to Rule 38(3)(a) of the Revised Rules of the Supreme Court of the United States.

The said brief of Respondent was received by Petitioner on September 19, 1949.

Petitioner, acting as expeditiously as possible, prepared and filed herein, on September 28, 1949, at 6:05 P. M., its brief in reply to the said brief of Respondent.

On October 10, 1949, this Honorable Court issued its order denying the said petition for a writ of certiorari.

The facts recited in this paragraph III were not learned by Petitioner until after service upon it of the order of this Court denying its petition for a writ of certiorari.

The said brief of Respondent contained many gross errors in statements of fact and holdings of cases of this Court, which errors were pointed out in the brief of Petitioner in reply thereto.

IV.

The Court of Appeals of the Ninth Circuit, on October 18, 1949, isssued its mandate against this Petitioner, enforcing the aforementioned order of the National Labor Relations Board.

Statement of Grounds Urged in This Petition.

I.

That in view of the pendency of a similar action in the Court of Appeals for the District of Columbia, which Court previously reached a conclusion in said pending action which is in conflict with the decision of the Court of Appeals for the Ninth Circuit in the instant case, the question of the effect of the loss of majority status of the Union is one of great importance in the administration of the Labor Management Relations Act, which should be determined by this Court.

II.

That the order of the National Labor Relations Board, enforced in full by the Court of Appeals for the Ninth Circuit in the instant case, is of a breadth beyond that which this Court has recently held may be issued in the circumstances of this case.

III.

That the brief of Respondent, having been filed herein beyond the time permitted by the Rules of this Court, should be stricken from the record of this matter, or in the alternative, and especially in view of the fact that a full court could not have considered Petitioner's brief in reply to the said brief of Respondent, Petitioner fears that the order of this Court denying its petition for a writ of certiorari, issued a short time after the filing of the said reply brief, had not received the attention of this Court at the time of issuing said order.

Wherefore, Your Petitioner Prays that a rehearing be granted and that a writ of certiorari issue under the seal of this Court, directed to the Court of Appeals of the United States for the Ninth Circuit, to the end that the proceedings of said Court in this cause may be reviewed and determined by this Court, as provided for by the Statutes of the United States; and that the judgment of said Court of Appeals be reversed; and that the mandate of the said Court of Appeals, which issued against petitioner on October 18, 1949, be revoked and stayed, pending the determination of this petition and the petition for a writ of certiorari; and for such further relief as the nature of the cause may require and the Court may deem proper in the premises.

Dated, October 21, 1949.

Respectfully submitted,

THE ANDREW JERGENS COMANY,
a corporation,

By HOMER D. CROTTY,
Attorney for Petitioner.

GIBSON, DUNN & CRUTCHER,
J. STUART NEARY,
FRANK MERGENTHALER,
Of Counsel.

Certificate of Counsel.

It is hereby certified that the above petition for rehearing is presented in good faith and it is the honest, sincere and earnest belief of counsel that the contents thereof are worthy of the consideration of this Court; that it is not filed for the purpose of delay; and counsel further certifies that this petition is restricted to grounds which are confined to circumstances coming to the attention of Petitioner subsequent to the filing of its petition for a writ of certiorari or to other substantial grounds available to Petitioner although not previously presented, except that the second ground urged herein was, to a small and inconsequential extent, called to the attention of this Court in a petition for a writ of certiorari, and the said ground is herein for the first time given full consideration.

HOMER D. CROTTY,

Attorney for Petitioner.

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THE ANDREW JERGENS COMPANY, a corporation,

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NATIONAL LABOR RELATIONS BOARD,

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BRIEF IN SUPPORT OF PETITION FOR REHEARING.

I.

The Question of the Effect of the Loss of Majority Representation by the Union With Which Petitioner Is Ordered to Bargain Is One of Great Importance in the Administration of the Act, as Is Evidenced by Pending Cases in the Courts of Appeals.

The Court of Appeals below in the instant case stated in its decision:

> "In its answer to the Board's petition for enforcement of its order, respondent alleges that since prior to January 1, 1948, none of its employees were members of the Teamsters. The Board admits the truth of this allegation in its brief." [R. 567.]

Despite the fact that it was also admitted that the Board did not give any consideration to such loss of majority status, but, on the contrary, erroneously assumed that the Union did represent a majority of employees (See: Petitioner's Reply Brief, p. 2, and references to record therein contained), the Court of Appeals held that such loss of majority status was not a bar to enforcement of the order to bargain and that it could be conclusively presumed that such loss was due to unfair labor practices. That was held by the Court below, although such unfair labor practices, if any, had occurred almost three years before the loss of majority representation became evident. This was held in the face of Petitioner's petition to adduce additional evidence relating to the loss of majority status.

In contrast and in conflict with the reasoning of the Court of Appeals below is a decision of the Court of Appeals for the District of Columbia in the case of *National Labor Relations Board v. Maurice Eanet,* No. 9792, decided September 27, 1948. In that case two years had elapsed between the occurrence of the unfair labor practice and the decision of that Court. (This is to be contrasted with the period of time in the instant case which was over three years between the commission of any unfair labor practice and the decision of the Court of Appeals for the Ninth Circuit.) In view of the delay of two years, and even in the absence of any petition to adduce additional evidence on the part of the employer, or any allegation on the part of the employer with respect to the union's majority status, the Court of Appeals for the District of Columbia held that the order to bargain could not be enforced as it felt that due to the lapse of that period of time a redetermination must be made as to whether the union represented a majority of the employees.

The facts in that case are different from the instant case to a small extent as the facts of all cases differ. However, here at least is one court which does not apply any conclusive presumption as to the cause of the loss of majority status by a union. It is respectfully submitted that the decision given by that Court cannot be reconciled with that of the Court below in the instant case.

The Court of Appeals for the District of Columbia, vacated the aforementioned decision and a rehearing was held. No further decision has been rendered although over a year has elapsed. The opinion referred to is reproduced in full and attached hereto as Appendix "A."

The matter of *National Labor Relations Board v. Maurice Eanet, supra,* was cited to this Court in the petition for a writ of certiorari and in the brief attached thereto as being in conflict with the decision of the Court below in the instant case. Citation was made to Labor Cases (an unofficial Reporter), and it was not realized at that time that the decision had been vacated. In view of the fact that that case is still pending, and especially in the light of that Court's reasoning in its vacated decision, it is the honest desire of counsel to call this Court's attention to that case as it reveals the extent to which the question of the effect of loss of majority status is still an undetermined question, and the order of this Court, in denying Petitioner's petition for a writ of certiorari, will no doubt have a strong impact upon that case. It is indeed sincerely felt that the pendency of a similar case in another Circuit, which Circuit has revealed that it is not inclined to agree with the Court of Appeals for the Ninth Circuit in this case, is alone sufficient grounds for this Court to give reconsideration to Petitioner's petition for a writ of certiorari and grant a hearing in the instant case.

II.

The Order of the Board Enforced by the Court Below Is Too Broad in Its Scope, in That It Prohibits Petitioner Under Penalty of Contempt From the Doing of Acts Which Have Not Been Found to Have Been Threatened.

The Board found that Petitioner had refused to bargain on the sole issue of union security and by the giving of a unilateral wage increase. There was no evidence nor was there, of course, any finding that Petitioner was an employer who had not accepted the principle that employees had the right to collectively organize and bargain. The decision of the Board, as well as the Court, is explicit that on all issues other than union security the parties were in agreement [R. 26, 28, 30, 32, 36, 105, 109], and from that it is clear that on all such other issues Petitioner was bargaining in good faith. The unfair labor practices found, therefore, relate to a single issue of the many issues which go into the meaning of a collective bargaining agreement, with the single addition of the unilateral wage increase.

It is earnestly submitted that such conduct does not at all evidence that this Petitioner is threatening the acts which the order enforced in the instant case would prohibit under penalty of contempt.

The order prohibits under such penalty any act which may subsequently be determined to have been a refusal to bargain, or to be an interference with the efforts of the Union to bargain with Petitioner. If the Petitioner refused to meet with a certain individual as representative

of the Union because that individual was obnoxious to Petitioner, though offering at all times to meet with any other person whatsoever as representative of the Union, the Petitioner would be committing the technical unfair labor practice of refusing to bargain.

It is submitted that there could be no debate over the proposition that if the order enforced in the instant case expressly prohibited Petitioner from engaging in that type of refusal to bargain, that this Court would not permit it to stand since there is not a scintilla of evidence any where in the record that Petitioner's conduct in the past could be the basis for the expectation of such conduct in the future. Yet if Petitioner engaged in such conduct, it would just as clearly be in violation of paragraph 1 (a) and 1 (b) of the instant order, as set out in the petition and in the record at 110-114.

Another example is that Section 2 (a) of the order requiries Petitioner, in the event an agreement is reached, to embody such agreement into a signed contract. There is no suggestion any where in the record that Petitioner has ever refused to put any agreement in writing, and, in fact, this section of the order becomes ridiculous when it is realized that in this case it was the Petitioner who urged upon the Union at the bargaining conference of January 17, 1946, to embody the terms upon which they had reached agreement into a contract. [R. 26, 32, 36, 37.] Far from there being any evidence in the record that Petitioner threatened to engage in such a refusal, there is, in fact, evidence in the record that Petitioner

desires to do that which the order requires him to do. It is submitted, however, that Petitioner's willingness to comply with the order should not be taken by the Board as its authority to put it under the threat of contempt with respect thereto. Other cases of the various types of refusal to bargain could likewise be given, all of which would be in contravention of the order in this case, no evidence of any of which is any where in the record.

This Court recently considered an order which was identical with the order in the instant case and held that it must be modified as its scope enjoined things as to which the record showed no threats on the part of the employer to engage in. The case of *National Labor Relations Board v. Crompton-Highland Mills, Inc.*, 93 L. Ed. 918, involves the unfair labor practice of a unilateral wage increase in an amount which was in excess of that previously negotiated with the union. This Court held that the order must be modified so as to prohibit the employer from only engaging in the specific acts found to have been violations of the rights of employees. In the instant case the only additional feature which exists is the finding of a refusal to bargain on a single issue of union security, accompanied by a complete willingness to bargain on all other terms and conditions of employment and, in fact, agreement on all such other terms and conditions.

It is, therefore, submitted that the decision of this Court in the *Crompton-Highland Mills, Inc.*, case requires that the order in the instant case be remanded to the Court of Appeals for the Ninth Circuit in order to at least be

modified so as to prohibit Petitioner from committing only the two isolated unfair labor practices which have been found, that is, with reference to union security and with reference to a unilateral wage increase.

This Court stated in the *Crompton-Highland Mills, Inc., case,* 93 L. Ed. 918:

> "The precise issue presented is what decree, if any, should be issued by the Court of Appeals for the enforcement of the order of the National Labor Relations Board. If a decree is to be issued, its scope and terms should be based upon such part, or all, of the Board's cease and desist order as is supported by its findings of fact." (p. 920.)
>
> "We hold that the Board's order to cease and desist is justified, under the circumstances of this case, to the extent that the order requires the employer to cease and desist from refusing to bargain collectively by taking action, without prior consultation with the authorized collective bargaining representative of the employees, with respect to general rates of pay which are substantially different from, or greater than, any which the employer has proposed during its negotiations with such representative." (p. 922.)
>
> *"The decree of enforcement should not extend further than necessary to prevent the taking of the prohibited action by the employer.*
>
> "There are no findings by the Board that establish a lack of good faith or lack of consistency with the principle of collective bargaining on the part of the employer other than in the connection above discussed." (p. 923; Emphasis that of Court.)

In the instant case the Board makes no statement as to why the order it issued must be of the scope in which it is formed. The Intermediate Report of the Trial Examiner [R. 48] states that "As there is no evidence of the danger of the commission of unfair labor practices" other than those found to be anticipated from Petitioner's conduct, an order to cease and desist from other unfair labor practices is not recommended.

It is submitted that the distinction in form, nature and effect between the various types of refusal to bargain is in many cases comparable to the distinctions in other unfair labor practices not found to be committed.

The question, of whether Petitioner's conduct is such as to justify the order in the instant case, should be viewed in the light of the fact that a strike occurred at Petitioner's plant in February of 1946, which lasted for several months thereafter, and that during the existence of that strike there was no conduct on the part of Petitioner which in any way interfered with the rights of the employees to engage in such activity.

It is submitted, therefore, that the conduct of Petitioner, as disclosed in this case, is within the principle enunciated by this Court in the case of *National Labor Relations Board v. Crompton-Highland Mills, Inc.*, 93 L. Ed. 918, and the matter should be remanded to the Court of Appeals for the Ninth Circuit so as to modify its order enforcing the order of the Board consistent with the principles of that case.

III.

In View of the Conduct of the National Labor Relations Board, Respondent Herein, In Filing Its Brief Beyond the Permitted Time, and the Decision of the Court at an Early Date Shortly Thereafter the Reply Brief of Petitioner Should Be Reconsidered.

As stated in the petition, the brief of Respondent herein was filed September 14, 1949. Rule 38(3)(a) of the Rules of this Court provide:

> "If the date for filing a brief in opposition falls in the summer recess, the brief may be filed within forty days after the service of the notice, but this enlargement shall not extend the time to a later date than September 10th."

Petitioner received a copy of said brief of Respondent on September 14 and was unable to file its reply thereto until the evening of September 28, a Thursday. The order of this Court denying the petition for a writ of certiorari was issued October 10. At the time of filing said reply brief and at the time of the issuance of the said order, a full Court was not present. The brief of Respondent, as pointed out in Petitioner's reply brief, contained gross and misleading statements of a nature which required consideration of such a reply brief for the proper assistance of the Court.

The Court is, therefore, respectfully requested to reconsider this reply brief as Petitioner fears that the ruling of this Court issued on October 10, 1949, has been made

without sufficient time for consideration of the reply brief of Petitioner, inasmuch as that brief was received by the Court only a few days before that ruling.

Dated October 21, 1949.

All of which is respectfully submitted,

HOMER D. CROTTY,
Attorney for the Andrew Jergens Company, Petitioner.

GIBSON, DUNN & CRUTCHER,
J. STUART NEARY,
FRANK MERGENTHALER,
Of Counsel.

APPENDIX A.

National Labor Relations Board, Petitioner, v. Maurice Eanet and Ben Rich, as Individuals and Co-Partners Doing Business as Parkside Hotel, and Parkside Hotel, Incorporated (a Corporation), Respondents.

United States Court of Appeals, District of Columbia. No. 9792. September 27, 1948.

On Petition for Enforcement of an Order of the National Labor Relations Board.

Robert Todd McKinlay (David P. Findling, Associate General Counsel, Ruth Weyand, Acting Assistant General Counsel, and Ben Grodsky, on the brief), all of the National Labor Relations Board, Washington, D. C., for Petitioner.

William H. Collins, Washington, D. C., for Respondents.

Before STEPHENS, Chief Justice, and MILLER and PRETTYMAN, Associate Justices.

PRETTYMAN, A. J.: This is a petition of the National Labor Relations Board for the enforcement of an order issued by it against the respondents. The Board found the respondents to be engaged in unfair labor practices and to have refused to bargain with a union of employees. It ordered the respondents to cease and desist from warning their employees to refrain from membership in any labor organization; threatening to discharge such employees because of their activities on behalf of any labor organization; questioning the employees concerning their membership in and activities on behalf of any labor organization; ordering such employees "to take vote as to

whether they desire to be represented by Hotel Service Workers, Local 80, A. F. of L., or any other labor organizations;" and interfering with the efforts of Hotel Service Workers, Local 80, A. F. of L., to negotiate for or represent employees. The Board also directed the respondents to post notices in a prescribed form and "Upon request, bargain collectively with Hotel Service Workers, Local 80, A. F. of L., as the exclusive representative of all its employees in the aforesaid appropriate unit, * * *."

The bargaining unit involved in this case consisted of the "bellmen, maids, elevator operators, janitors, housemen, and cleaners" employed at the respondent's hotel. There were either nine or ten[1] of these employees in the unit. The union established that it had been designated as the collective bargaining representative by six of these employees.

The charge of unfair labor pracice rested upon a statement alleged to have been made by a housekeeper to a bellboy, to the effect that if the maids under her supervision joined the union, she would discharge them. The housekeeper made an affidavit to that effect, but on the witness stand she testified that she and the bellboy were "kidding" and that she said, "I am not going to join the union" and could not remember saying anything further. Counsel for the Board thereupon pleaded surprise and produced the affidavit given by the housekeeper to a field examiner. She then said that the affidavit was correct. The bellboy was not called as a witness. The charge of

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[1]The Board's report states that there were ten employees, but the payroll introduced in evidence showed nine, five maids, three bellboys and one houseman.

interference with employees in the exercise of their rights (violation of Section 8 (1) of the Act[2]) rested upon action taken by the manager of the hotel. Agents of the union called upon him with cards purporting to show that the union represented a majority of the employees. Some discussion was had, and the union representatives and the manager executed an instrument called an "Agreement for Cross-Check". Pursuant to that agreement, a notice concerning the cross-check was posted. Thereafter the employees took a vote, apparently among themselves, and turned the ballots over to the manager. These ballots, according to the manager, were unanimous against representation by the union. Thereafter there ensued a long discussion in which the respondents refused to bargain with the union, on the ground that the union did not represent the employees. The manager testified at the hearing that at the time the cross-check was proposed the field representative of the Board told him that the employer had a right to cross-check; that he inquired what a cross-check was and was told that it was "a revote on it"; and that the field representative told him that after the agreement was signed, "Then you post a notice downstairs for five days, and then you take a vote." The manager said that they followed these precise instructions. He said:

> "I never infoenced [*sic*] them one way or another, but I did post the notice five days, and I thought that someone was going to come in and ask what happened, but nobody showed up at the end of the five days, and I took the notice down. They made the

[2]49 Stat. 452 (1935), 29 U. S. C. A. §158(1).

vote among themselves, one of their representatives did, and they unanimously voted against it. I wrote in to Baltimore and told them that the vote seemed negative, that they weren't interested, and I got a letter back saying that the union had been designated as the representative to bargain."

It would appear from the decided cases that if the housekeeper made the threat of discharge, and if the manager ordered and took the poll of the employees in the manner described by the Board, respondents would have been guilty of violation of the Act. Thus, the case on the merits would depend upon the sufficiency of the evidence to support the findings. But we think that this particular case requires other disposition.

We think that the dates involved in this proceeding are important to the disposition of the case. The controversy between the union the respondents occurred in April, 1946, which was more than two years ago. The hearing was had August 6, 8 and 9, 1946. The trial examiner issued his intermediate report, which contained his findings of fact and recommendations, on October 18, 1946. The Board issued its decision and order, approving the trial examiner's report, on July 31, 1947, which was nine months later. It filed its petition in this court, for enforcement of its order, on March 10, 1948.[3]

In sum total, therefore, we have a case which involves a controversy as to whether six out of nine or ten employees of a small hotel wished more than two years ago to be represented by a designated union. No election

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[3]The respondents' brief was filed May 28, 1948.

has ever been held. It is common knowledge that the personnel, such as bellboys, elevator operators, maids and janitors of small hotels constantly changes. The Board asks us not only to require these respondents to refrain from interfering with their employee's joining this one named Local 80 but also to require them to bargain collectively with that named Local 80. The latter requirement is unqualified and unlimited as to time.

An enforcement order of this Court is a serious exercise of judicial power and once such an order is issued, we intend it to be observed, literally and without equivocation. We feel that we must take a realistic view of the present case. There would be nothing realistic, in our view, in directing these respondents to bargain collectively with a named union on the basis of a showing that more than two years ago the union had been selected by six out of nine or ten bellboys, maids and a houseman in this small hotel. We, therefore, decline to issue the enforcement order.

If it be that the conditions found to have existed in April, 1946, continue to exist, the Board can easily bring its information up to date. If the employees wish to organize, or if the union claims to represent a majority, an election ought to be requested.

Upon the foregoing conditions, the petition of the Board is denied.

STEPHENS, Ch. J.: I think there is evidence to support the finding of the Board that the respondents' housekeeper threatened discharge of employees if they joined a union and evidence to support the finding that respondents' manager took a poll of the employees to determine whether or

not they desired to be represented by Local 80, A. F. of L. I think also that the authorities support the conclusion of the Board that such acts constitute violations of Section 8 (1) of the National Labor Relations Act. In my view, therefore, a decree should be issued enforcing the Board's cease and desist order to the extent that it forbids such practices. But I agree with the conclusion of the majority that the Court should not on the present record issue a decree enforcing that portion of the Board's order which requires the respondents to bargain collectively with Local 80, A. F. of L.